

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 04-10195-PBS
)	
MICHAEL PINA)	

**JOINT STATUS REPORT OF GOVERNMENT AND DEFENDANT REGARDING
APPLICATION OF 18 U.S.C. § 3582(c)(2) AND U.S.S.G. § 1B1.10**

The United States, by United States Attorney Michael J. Sullivan and Assistant United States Attorney Donald L. Cabell, and the defendant Michael Pina, by defense counsel Timothy G. Watkins, Assistant Federal Public Defender, respectfully submit this memorandum to address the defendant's eligibility for a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10. Pursuant to paragraph 1 of this Court's procedural order dated March 27, 2008, the parties have conferred with each other and with United States Probation Officer Susan Walls. In the view of both the government and undersigned counsel, defendant is ineligible for a reduction in sentence as his sentence was based on the career offender guideline and the sentence imposed was pursuant to a binding plea agreement which stipulated a sentence below the career offender range.¹ Moreover, even had defendant not been a career offender, the sentence ultimately imposed was within the revised guideline

¹The binding plea agreement appears as Docket Entry #106 in this matter.

range applicable to defendant notwithstanding the career offender designation. For these reasons, no relief is available under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10.²

In the government and undersigned counsel's view, no hearing or briefing schedule is necessary.

RESPECTFULLY submitted this 3rd day of September, 2008.

MICHAEL PINA
Defendant

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Timothy G. Watkins
Timothy G. Watkins
Assistant Federal Public
Defender

By: /s/ Timothy G. Watkins
o/b/o Donald L. Cabell
Assistant U.S. Attorney

²As defendant's pro se filing correctly indicates, undersigned counsel has notified defendant of the substance of this motion and counsel's intention to so inform the Court as to counsel's view. See Defendant's Pro Se Motion to Withdraw as Attorney as to Timothy G. Watkins. While counsel firmly believes he has set forth an accurate appraisal in this joint status memorandum, counsel also recognizes that reasonable minds can - and in this case, do - differ about eligibility for relief. See Motion for Retroactive Application of Sentencing Guidelines to Crack Cocaine Offense 18 U.S.C. § 3582 as to Daniel Gomes, Docket Entry #141. Undersigned counsel therefore recommends that the Court consider treating defendant's Pro Se Motion to Withdraw as Attorney as a pro se request to join in Gomes's Motion, which the Court has this day denied. This procedure will ensure that defendant's appeal rights, if any, are saved.

CERTIFICATE OF SERVICE

I, Timothy G. Watkins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on September 3, 2008.

/s/ Timothy G. Watkins
Timothy G. Watkins